

# **DUI SEMINAR**

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APAAC Training Center  
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## **OPENING STATEMENTS**

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Distributed By:

**ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL**  
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Phoenix, Arizona 85015

# OPENING STATEMENTS

By:  
Tobin Sidles



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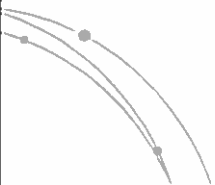
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## Opening Statements

The most important part of your trial!



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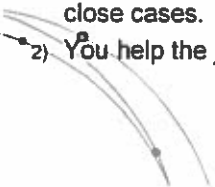
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## Opening Statements

- Why is it important?
  - 1) Although prosecutors are fair, **YOU LIKE TO WIN!** A good opening will win the close cases.
  - 2) **You** help the jury remember.



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### Opening Statements

- All experts agree that over 75% of your jurors will make up their minds as to guilty or not guilty by the end of opening statements!




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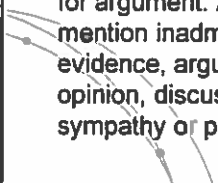
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### Opening Statements

- TRADITIONAL THEORY – Opening statements are restricted to what the parties expect to prove during trial through witnesses and exhibits. This is not a time for argument. As always, it is improper to mention inadmissible or unprovable evidence, argue, vouch, state personal opinion, discuss the law or appeal to sympathy or prejudice.




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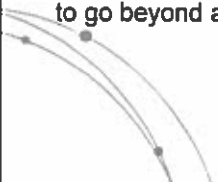
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### Opening Statements

- Modern View – Judge's Instruction - "What the attorneys say is not evidence..."
- A broader view, although it isn't a license to go beyond acceptable boundaries.




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## Opening Statements

- The Psychology of the Opening Statement




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## Opening Statements

- All the studies show that most jurors really can't remember who told them what. To them, your opening statements really is evidence.

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## Opening Statements

- Some Juror Misconduct cases in the news:

Tweet- "I'm so bored, guy is guilty"- (Sent at the end of the defense attorneys opening statement.)

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## Opening Statements

- E-Mail after Prosecutors Opening - "Guilty. He is Guilty. I can tell."




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## Opening Statements

- Why does this happen?

In psychology, it is called the "Rule of Primacy". If you believe something the first time you hear it, usually because of past events, you will process the information that supports your view, and discard items that contradict that view.

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## Opening Statements

- EXAMPLE - You are going to the brand new Disney Princess movie – the stepmom in the movie is going to be \_\_\_\_?

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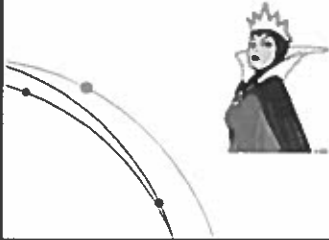
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## Opening Statements

EVIL




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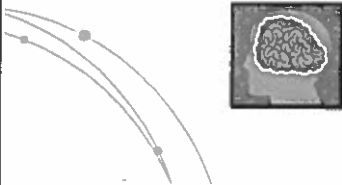
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## Opening Statements

- The human brain is hard wired to create psychological anchors in order to distill and process information.




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## Opening Statements

- Trial tip # 1-Jurors will remember the first things you say, and the last things you say the best, especially if you tell them you are about to finish up. So start with your strongest evidence, tell them you are about to finish and end strong!




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## Opening Statements

### Trial tip # 2

At no time will a jurors attention to your opening statement last longer than fifteen (15) minutes, unless you add a surprise.

If you talk under two (2) minutes, it is perceived you may not be sincere or believe your own evidence.

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## Opening Statements

- **FIRST RULE-** Have a theme. Use an attention getting introduction (hook). Be creative. If not ?
- **SECOND RULE -** Back up your theme with a few strong facts. (Try for three).
- **THIRD –** Convince the Jury of your integrity

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## Opening Statements

- 1) **FIRST RULE –**Have an attention-grabbing intro statement to set your theme!! Use a "hook"!




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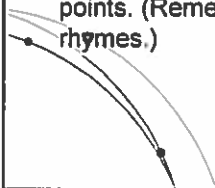
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## Opening Statements

- Trial tip # 3 – Your themes should be associated with clichés, sayings and especially rhymes.
- These sayings are a ready made anchor points. (Remember, the brain loves rhymes.)




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## Opening Statements

- The most common problems with experienced prosecutors? We do standardized openings and our theme is mostly a recitation of our facts and elements.




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## Opening Statements




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## Opening Statements

- This lacks any "Hook" or "Pizzazz".
- It spends the prime "remembering" time on elements and inconsequential facts.




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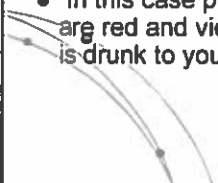
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## Opening Statements

TRY:

- "Hook" statements –Try "The state's theme? When you are talking DUI's, a .08 is just too high." or
- "In this case please remember that roses are red and violets are blue, but at .08 this is drunk to you."




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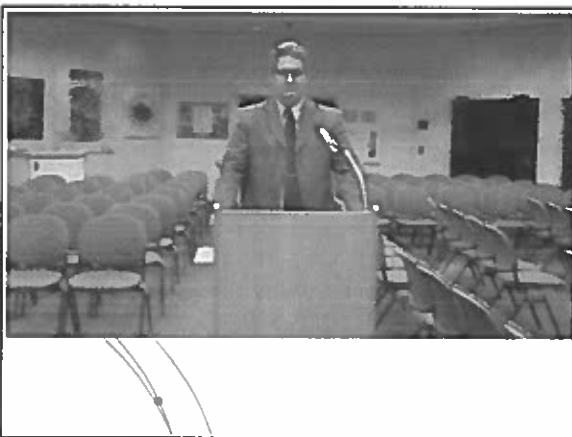
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### Opening Statements

- Isn't that guy a schmuck?
- Answer: YES




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### Opening Statements

- What opening statement of the two will the jury remember tomorrow during their deliberations?




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### Opening Statements

- SECOND RULE

Provide a short, chronological list of strong facts which support your theme in the opening.




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## Opening Statements

- In a typical case you might have:
  1. Bad driving (weaving)
  2. A Statement- "I was coming from my birthday party"
  3. A BAC above .08
  4. Two or more poor SFST's.

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## Opening Statement

- Tip - Pick your four best facts. Rate them. State numbers one 1,3 and 4 in the opening statement and develop the second best during the course of the trial.
- Numbers 1,3 and 4 are your contract with the jury! Your contract comes during the opening. You MUST fulfill that contract.

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## Opening Statement

- In this trial, my number two is the statement "I was coming from my birthday party"
- Officer, \_\_\_\_\_ said they were coming from their birthday party. Do you know if they are over twenty-one?

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## Opening Statements

- THIRD RULE
- Show Enthusiasm, Integrity, and Honesty.

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## Opening Statements

- Why hold the one good fact back at opening? To "seal the deal" from your opening.
- You gave them your promised statements plus something else that proved your position, ergo –you are sincere and trustworthy. Pound in that "extra fact" at closing!

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## Opening Statements

- Enthusiasm – If you don't believe it, why should the Judge/Jury?
- Don't ruin your jury rapport by over-using technology! (Like me). It takes away from establishing a personal rapport. Look them in the eye and speak clearly and forcefully.

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## Opening Statements

- **Honesty**

- As stated, you must provide the evidence you promised! Failure to deliver kills your credibility for honesty.

- Remember, even if the defense counsel comes up with another slant- **YOU GOT THERE FIRST ! (RULE OF PRIMACY).**

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## Opening Statements

- **OTHER OPENING STATEMENT TRIAL TIPS**

- 4) Pull the sting? Usually NO on an easy short case. Why dilute your argument? Remember "Primacy". If a long case-yes.
- 5) Never use the term "I believe.."! It is vouching. (See *Hodgins v. State*, 962 P.2d 153 (1998))
- 6) You really don't have to include the elements. It's the Judges job. Too many use it as a crutch and it ruins your jury rapport.

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## Opening Statements

- 7) Tell a story from what the witnesses saw, and don't use cop lingo.
- 8) Never use "legalese" or complex words.
- 9) Always make eye contact with the jury (Just don't "mad dog").
- 10) While talking- don't turn your back on the jury. And NEVER talk to your slides/presentation!

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## Opening Statements

11) Always end with a strong request for a finding of guilt.

"The evidence presented to you will prove beyond a reasonable doubt that the defendant is guilty." Remember ( repeat your opening hook statement). In closing, if they attacked the officer state ( You can tell officer \_\_\_\_\_ don't despair, it is obvious \_\_\_\_\_ was impaired!) Rhymes work!

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## Opening Statements

### • In Summary-

- Establish a theme-Start with a good strong statement/"hook". Start and end strong!
- Give three good facts about the case, hold one good thing back for trial and closing.
- Do NOT overpromise, overuse technology (but don't abandon it either!), or vouch. Use the Rules of Primacy and Recency!

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## Opening Statements

### • QUESTIONS?

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## THE END

Thanks to:

Prof. Tom Mauet

Laura Reckert

and A.P.A.A.C./ Governors Office of Highway Traffic Safety

(Arkansas trial overturned, 2011; LA Times-social media and the law 2010)

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